What are the Options if a Florida Agency Refuses to Produce Public Records for Inspection and Copying?

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1. Voluntary Mediation Program.

Section 16.60, F.S., establishes an informal mediation program within the Office of the Attorney General as an alternative for resolution of open government disputes. For more information about the voluntary mediation program, please contact the Office of the Attorney General at the following address: The Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; telephone (850)245-0140; or you may visit the Office of the Attorney General website: http://myfloridalegal.com.

By Executive Order 07-01, the Governor created the Office of Open Government, charged with providing the Office of the Governor and each of the executive agencies under the Governor's purview guidance to assure full and expeditious compliance with Florida's open government and public records laws. *See also* Executive Order 07-242 directing all gubernatorial agencies to adopt an Open Government Bill of Rights. For more information about the Office of Open Government, please contact the office at the following address: The Office of Open Government, PL-04, The Capitol, Tallahassee, Florida 32399-0001; telephone (850) 921-6099; or you may visit the Office of Open Government website: http://www.flgov.com/og_home Also available on the website is the 2009 report of the Commission on Open Government Reform at: http://www.flgov.com/pdfs/og_2009finalreport.pdf

2. Civil Action.

a. Remedies

A person denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119, F.S. *See Radford v. Brock,* 914 So. 2d 1066 (Fla. 2d DCA 2005) (trial judge dismissal of a writ of mandamus directed to clerk of court and court reporter who were alleged to be records custodians was erroneous because trial judge did not issue a show cause order to the clerk of court and court reporter, and because there was no sworn evidence refuting the petitioner's allegations).

Before filing a lawsuit, the petitioner must have furnished a public records request to the agency. *Villarreal v. State,* 687 So. 2d 256 (Fla. 1st DCA 1996), *review denied*, 694 So. 2d 741 (Fla. 1997), *cert. denied*, 118 S.Ct. 316 (1997) (improper to order agency to produce records before it has had an opportunity to comply); and *Maraia v. State,* 685 So. 2d 851 (Fla. 2d DCA 1995) (public records action dismissed where petitioner failed to file a request for public records with the records custodian before filing suit). *See also Mills v. State*, 684 So. 2d 801 (Fla. 1996) (no abuse of discretion in trial court's failure to order sheriff's department to produce certain requested records where there was no demonstration that the records exist); and *Hillier v. City of Plantation*, 935 So. 2d 105 (Fla. 4th DCA 2006) (trial court finding that city had complied with petitioner's public records requests was supported by competent, substantial evidence). *Cf. Coconut Grove Playhouse, Inc. v. Knight-Ridder, Inc.*, 935 So. 2d 597 (Fla. 3d DCA 2006) (trial court order departed from essential requirements of law by requiring defendant in a public records action to produce its records as a sanction for failure to respond to a discovery subpoena).

Where a multi-agency law enforcement task force had been created by a mutual aid agreement and the agreement did not indicate an intent to create a separate legal entity capable of being sued in its own name, a requestor could not sue the task force for production of records; however, as the agreement did not specify which agency would be responsible for responding to public records requests, an action could be brought against any of the member agencies to produce records in the possession of the task force. *Ramese's, Inc. v. Metropolitan Bureau of Investigation*, 954 So. 2d 703 (Fla. 5th DCA 2007).

Section 119.11(1), F.S., mandates that actions brought under Ch. 119 are entitled to an immediate hearing and take priority over other pending cases. *See Salvador v. Fennelly*, 593 So. 2d 1091 (Fla. 4th DCA 1992) (the early hearings provision reflects a legislative recognition of the importance of time in public records cases; such hearings must be given priority over more routine matters, and a good faith effort must be made to accommodate the legislative desire that an immediate hearing be held). Expedited review of denials of access to judicial records or to the records of judicial agencies shall be provided through an action for mandamus, or other appropriate appellate remedy. Rule 2.420(h), Fla. R. Jud. Admin. *Cf.* s. 119.07(9), F.S. (s. 119.07, F.S., may not be used by an inmate as the basis for failing to timely litigate any post-conviction action). *And see Woodfaulk v. State*, 935 So. 2d 1225 (Fla. 5th DCA 2006) (s. 119.11, F.S., does not place specific requirements on a party requesting public records to obtain an accelerated hearing except the filing of an action to enforce the public records law).

(1) Mandamus

Generally, mandamus is the appropriate remedy to enforce compliance with the Public Records Act. *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992), *review dismissed sub nom., Staton v. Austin*, 605 So. 2d 1266 (Fla. 1992). *See also Weeks v. Golden,* 764 So. 2d 633 (Fla. 1st DCA 2000); *Smith v. State,* 696 So. 2d 814 (Fla. 2d DCA 1997); *Donner v. Edelstein*, 415 So. 2d 830 (Fla. 3d DCA 1982); *Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981). If the requestor's petition presents a prima facie claim for relief, an order to show cause should be issued so that the claim may receive further consideration on the merits. *Staton v. McMillan*, *supra*. *Accord Gay v. State,* 697 So. 2d 179 (Fla. 1st DCA 1997). *Cf. Minasian v. State,* 967 So. 2d 454 (Fla. 4th DCA 2007) (petition for writ of mandamus is the proper vehicle to seek review of the denial of access to judicial records).

However, it has been held that mandamus is not appropriate when the language of an exemption statute requires an exercise of discretion. In *Florida Society of Newspaper Editors, Inc. v. Public Service Commission*, 543 So. 2d 1262 (Fla. 1st DCA 1989), the court found that discretion would be required to determine whether certain records of the Public Service Commission constituted "proprietary confidential business information;" thus, mandamus would not lie to compel disclosure of the records. *Accord Shea v. Cochran*, 680 So. 2d 628 (Fla. 4th DCA 1996) (mandamus was an inappropriate remedy where sheriff provided a specific reason for refusing to comply with a public records request by claiming the records were part of an active criminal investigation). *And see Skeen v. D'Alessandro*, 681 So. 2d 712 (Fla. 2d DCA 1995) (mandamus not a proper remedy if there is no evidence, presented or proffered, that the requested document existed at the time of the mandamus hearing); *Hall v. Liebling*, 890 So. 2d 475 (Fla. 2d DCA 2004) (mandamus cannot be used to compel a former assistant public defender who is now in private practice to release documents to his former client because the attorney is now a private citizen, not a government official); and *Lozman v. City of Riviera Beach*, 995 So. 2d 1027 (Fla. 4th DCA 2008) (because s. 119.07[4], F.S., did not require city to provide additional records when bill for first group of records requested had not been paid, requestor not entitled to writ of mandamus).

Mandamus is a "one time order by the court to force public officials to perform their legally designated employment duties." *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996), *review denied,* 684 So. 2d 1353 (Fla. 1996). Thus, a trial court erred when it retained continuing jurisdiction to oversee enforcement of a writ of mandamus granted in a public records case. *Id. Cf. Areizaga v. Board of County Commissioners of Hillsborough County,* 935 So. 2d 640 (Fla. 2d DCA 2006), *review denied*, 958 So. 2d 918 (Fla. 2007) (circuit courts may not refer extraordinary writs to mediation; thus, trial judge should not have ordered mediation of petition for writ of mandamus seeking production of public records).

(2) Injunction

Injunctive relief may be available upon an appropriate showing for a violation of Ch. 119, F.S. *See Daniels v. Bryson*, 548 So. 2d 679 (Fla. 3d DCA 1989) (injunctive relief appropriate where there is a demonstrated pattern of noncompliance with the Public Records Act, together with a showing of likelihood of future violations; mandamus would not be an adequate remedy since mandamus would not prevent future harm).

(3) Declaratory relief sought by agencies

Occasionally the question arises as to whether an *agency*, faced with a demand for public records, may seek guidance from the court in the form of a complaint for declaratory judgment instead of complying with the request for public records or asserting an exemption. It has been held that such requests for general declaratory relief are not appropriate. *See Sarasota Herald-Tribune Company, Inc. v. Schaub*, No. CA87-2949 (Fla. 12th Cir. Ct. July 20, 1988), *per curiam affirmed*, 539 So. 2d 478 (Fla. 2d DCA 1989) (state attorney cannot litigate a declaratory judgment action to obtain judicial advice on how to perform his public duties under the Public Records Act); *Wille v. McDaniel*, 18 Med. L. Rptr. 2144, No. CL-91-154-AE (Fla. 15th Cir. Ct. February 18, 1991) (sheriff's stated purpose in litigating declaratory judgment action [to avoid being assessed attorney's fees under the Public Records Act] is insufficient to support a declaratory action). *See also Askew v. City of Ocala*, 348 So. 2d 308 (Fla. 1977) (trial court properly dismissed complaint for declaratory relief for failure to state a cause of action where public officials disagreed with Attorney General's advisory opinion and sought different judicial opinion).

In *WFTV, Inc. v. Robbins*, 625 So.2d 941 (Fla. 4th DCA 1993), the court held that a supervisor of elections who denied a public records request to inspect certain election results on the grounds that a court order entered in another case involving the election prohibited disclosure, "unlawfully refused" access to public records. The court determined that the supervisor herself had sought the confidentiality order by means of a motion seeking "directions" from the court in the election lawsuit. The supervisor was thus liable for payment of attorney's fees incurred by the requestor in the subsequent public records action pursuant to s. 119.12, F.S., providing for an assessment of attorney's fees and costs if an agency unlawfully refuses to permit examination and inspection of documents under the Public Records Act. *See also City of St. Petersburg v. St. Petersburg Junior College*, No. 93-0004210-CI-13, *Order Awarding Attorney's Fees* (Fla. 6th Cir. Ct. March 25, 1994), in which a city that had initially filed an action for declaratory relief as to whether records requested under Ch. 119 were confidential under federal law was ultimately determined to be liable for attorney's fees under s. 119.12, F.S., after the party seeking the records filed a counterclaim and the judge determined that the records were not exempt.

b. Procedural issues

(1) Discovery

In the absence of an evident abuse of power, the trial court's exercise of discretion in matters associated with pretrial discovery in a public records action will not be disturbed. *Lorei v. Smith*, 464 So. 2d 1330, 1333 (Fla. 2d DCA 1985), *review denied*, 475 So. 2d 695 (Fla. 1985). In *Lorei*, the appellate court upheld the trial judge's denial of a request to permit discovery pertaining to the agency's procedures for maintaining public records. *Id*. The court noted that the interrogatories related to "the mechanics associated with the department's record maintenance, the internal policies or actions which lead to the development of files," and other matters which were not relevant to the question of whether the requested records were exempt from disclosure. *Id*.

The court cautioned, however, that "discovery in a context such as the one at hand may well be appropriate in the circumstance where a good faith belief exists that the public agency may be playing 'fast and loose' with the requesting party or the court, once its statutorily delegated authority is activated." *Id. Cf. Lopez v. State*, 696 So. 2d 725, 727 (Fla. 1997) (trial court's denial of motion to depose custodian affirmed because there were "no allegations that any documents had been removed"); and *Johnson v. State*, 769 So. 2d 990, 995 (Fla. 2000) (discovery not warranted based on "bare allegations" that additional records "should" exist).

(2) Hearing

An order dismissing a public records complaint filed against a sheriff was overturned by the Fourth District because the judge failed to hold a hearing before entering the order. "Although the sheriff may ultimately not be able to retrieve these records, because of their age or another reason, the order in this case, entered without an evidentiary hearing, was premature." *Grace v. Jenne,* 855 So. 2d 262, 263 (Fla. 4th DCA 2003).

(3) *In camera* inspection

Section 119.07(1)(g), F.S., provides that in any case in which an exemption is alleged to exist pursuant to s. 119.071(1)(d) or (f), (2)(d), (e), or (f), or (4)(c), F.S., the public record or part of the record in question shall be submitted to the trial court for an *in camera* examination. *See City of St. Petersburg v. Romine ex. rel. Dillinger*, 719 So. 2d 19 (Fla. 2d DCA 1998) (*in camera* review mandated when confidential informant exception now found at s. 119.071[2][f], F.S., is asserted). *See also Walton v. Dugger*, 634 So. 2d 1059 (Fla. 1993); *Lopez v. Singletary*, 634 So. 2d 1054 (Fla. 1993) (records claimed by state attorney to constitute exempted work product must be produced for an *in camera* inspection; only the judge can determine whether particular documents are public records which must be disclosed to death penalty defendant in post-conviction proceedings. *But see Jordan v. School Board of Broward County*, 531 So. 2d 976 (Fla. 4th DCA 1988), in which a trial court's failure to conduct an *in camera* inspection of a file containing alleged exempt attorney work product was deemed to be an invalid basis for a new trial when neither party requested an *in camera* inspection, and the agency's attorney made no objection at trial.

If an exemption is alleged under s. 119.071(2)(c), F.S. (the exemption for active criminal investigative or intelligence information), an inspection is discretionary with the court. Section 119.07(1)(g), F.S. However, in *Tribune Company v. Public Records*, 493 So. 2d 480, 484 (Fla. 2d DCA 1986), *review denied sub nom., Gillum v. Tribune Company*, 503 So. 2d 327 (Fla. 1987), the court

stated that notwithstanding the trial court's discretion to provide an *in camera* examination if the active criminal investigative information exemption is asserted, it is always the better practice to conduct such an inspection in cases where an exception to the Public Records Act is in dispute. According to the court, inspection lends credence to the decision of the trial court, helps dispel public suspicion, and provides a much better basis for appellate review.

Similarly, in *Woolling v. Lamar*, 764 So. 2d 765, 768-769 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001), the Fifth District concluded that because the state attorney presented "no evidence to meet its burden that the records are exempt" under s. 119.071(2)(c), F.S., an "*in camera* inspection by the lower court is therefore required so that the trial judge will have a factual basis to decide if the records are exempt under [that statute]." *And see Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000) ("[w]e fail to see how the trial court can [determine whether an agency is entitled to a claimed exemption] without examining the records"); and *Garrison v. Bailey*, 4 So. 3d 683 (Fla. 1st DCA 2009) (in-camera inspection of records asserted by agency to be exempt is generally the only way for a trial court to determine whether or not a claim of exemption applies).

(4) Mootness

In *Puls v. City of Port St. Lucie,* 678 So. 2d 514 (Fla. 4th DCA 1996), the court, noting that "[p]roduction of the records after the [public records] lawsuit was filed did not moot the issues raised in the complaint," remanded the case for an evidentiary hearing on whether there was an unlawful refusal of access to public records. *See also Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487, 491 (Fla. 2d DCA 1990) (while courts do not ordinarily resolve disputes unless a case or controversy exists, "since the instant situation is capable of repetition while evading review, we find it appropriate to address the issues before us concerning applicability of the Public Records Act for future reference"); *Mazer v. Orange County,* 811 So. 2d 857, 860 (Fla. 5th DCA 2002) ("the fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner's] entitlement to fees under the statute"); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *appeal pending*, No. SC10-798 (Fla. April 20, 2010) (because damage occurred when city refused to produce canvassing board minutes until approved by city commission, production after the fact did nothing to mollify appellants' injury and therefore issue was not moot as city's refusal "denied any realistic access for the only purpose appellants sought to achieve--review of the Minutes before the Commission meeting."). *Compare Jacksonville Television, Inc. v. Shorstein*, 608 So. 2d 592 (Fla. 1st DCA 1992) (where public records lawsuit was determined to be moot because records were delivered to television station prior to entry of writ of mandamus, appellate court would not issue an "advisory opinion" as to whether trial court's voluntary conclusion that agency acted properly by initially withholding the records was correct).

Similarly, in *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 (Fla. 2d DCA 2004), *review denied*, 902 So. 2d 791 (Fla. 2005), *cert. denied*, 126 S.Ct. 746 (2005), the court found that a public records lawsuit over a custodian's requirement that a commercial company obtain a licensing agreement before using the records did not become moot when the custodian provided the company with the requested data after the lawsuit was filed. Because the data was delivered subject to a condition that it was for personal use only, a controversy remained concerning the validity of the custodian restriction on the use of the data. *And see Southern Coatings, Inc. v. City of Tamarac*, 916 So. 2d 19 (Fla. 4th DCA 2005) (federal court's dismissal of pendent claims based on state public records law is not a judgment on the merits and, therefore, not res judicata in a subsequent lawsuit in state court).

(5) Stay

If the person seeking public records prevails in the trial court, the public agency must comply with the court's judgment within 48 hours unless otherwise provided by the trial court or such determination is stayed within that period by the appellate court. Section 119.11(2), F.S. An automatic stay shall exist for 48 hours after the filing of a notice of appeal for public records and public meeting cases, which stay may be extended by the lower tribunal or the court on motion. Fla. R. App. P. 9.310(b)(2).

c. Attorney's Fees

Section 119.12, F.S., provides that if a civil action is filed against an agency to enforce the provisions of this chapter and the court determines that the agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award against the agency responsible the reasonable costs of enforcement including reasonable attorney's fees. A successful pro se litigant is entitled to reasonable costs under this section. *Weeks v. Golden,* 764 So. 2d 633 (Fla. 1st DCA 2000); *Wisner v. City of Tampa Police Department*, 601 So. 2d 296 (Fla. 2d DCA 1992). *And see Weeks v. Golden*, 846 So. 2d 1247 (Fla. 1st DCA 2003) (prevailing pro se inmate entitled to recover costs associated with postage, envelopes and copying, as well as filing and service of process fees, incurred in public records lawsuit). *Cf. Department of Health and Rehabilitative Services v. Martin*, 574 So. 2d 1223 (Fla. 3d DCA 1991) (error to award attorney's fees where order requiring production of records was entered pursuant to Adult Protective Services Act, rather than the Public Records Act); and *Downs v. Austin*, 559 So. 2d 246 (Fla. 1st DCA 1990), *review denied*, 574 So. 2d 140 (Fla. 1990) (s. 119.12, F.S., does not constitute authority for the award of attorney's fees for efforts expended to obtain the fee provided by that statute).

Section 119.12, F.S., is designed to encourage voluntarily compliance with the requirements of Ch. 119, F.S. *See Office of the State Attorney v. Gonzalez*, 953 So. 2d 759, 764 (Fla. 2d DCA 2007); and *New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993) ("If public agencies are required to pay attorney's fees and costs to parties who are wrongfully denied access to the records of such agencies, then the agencies are less likely to deny proper requests for documents.").

"[A]ttorney's fees are awardable for unlawful refusal to provide public records under two circumstances: first, when a court determines that the reason proffered as a basis to deny a public records request is improper, and second, when the agency unjustifiably fails to respond to a public records request by delaying until after the enforcement action has been commenced." *Office of the State Attorney v. Gonzalez, supra* at 764. Thus, attorney's fees are recoverable even where access is denied on a good faith but mistaken belief that the documents are exempt from disclosure. *WFTV, Inc. v. Robbins*, 625 So. 2d 941 (Fla. 4th DCA 1993); *Times Publishing Company v. City of St. Petersburg*, 558 So. 2d 487 (Fla. 2d DCA 1990); *News and Sun-Sentinel Company v. Palm Beach County*, 517 So. 2d 743 (Fla. 4th DCA 1987).

Similarly, the court in *Barfield v. Town of Eatonville*, 675 So. 2d 223 (Fla. 5th DCA 1996), rejected a town's defense that the delay in production of records was caused by either the intentional wrongdoing or ineptitude of its clerk as a valid basis for denying recovery of attorney's fees and costs under s. 119.12, F.S. *And see Office of the State Attorney for the Thirteenth Judicial Circuit of Florida v. Gonzalez, supra* (attorneys fees authorized even if failure to turn over the records was due to a mistake or ineptitude). *But see Alston v. City of Riviera Beach*, 882 So. 2d 436 (Fla. 4th

DCA 2004) (denial of attorney's fee claim affirmed because "[t]he record supports the trial court's conclusion that the city had a good faith and reasonable belief that Alston's request applied only to documents under the control of the parks and recreation department and that Alston failed to establish that the city unlawfully withheld police department records"). *Cf. Grapski v. Machen*, Case No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), *affirmed per curiam*, 949 So. 2d 202 (Fla. 1st DCA 2007) (inadvertent failure to produce some records by an agency seeking to comply with a public records request does not necessarily subject the agency to attorney's fees; a finding of an "unlawful" refusal or delay in producing public records requires some proof that the agency or public official took some action in hindering the production or took no action resulting in the unlawful delay in producing the records). *And see Greater Orlando Aviation Authority v. Nejame*, 4 So. 3d 41 (Fla. 5th DCA 2009), in which the court denied a request for attorney's fees as the aviation authority "did not act unreasonably or in bad faith in refusing production." In reaching this conclusion, the court relied on a case involving the assessment of attorney fees against a private entity acting on behalf of a public agency and a decision issued prior to the statute's amendment in 1984 when the statute authorized the imposition of attorney fees when records were unreasonably withheld. The statute was amended in 1984 to provide for the assessment of attorney's fees when an agency unlawfully refuses to release a public record.

In addition, an "unjustified failure to respond to a public records request until after an action has been commenced to compel compliance amounts to an unlawful refusal" for purposes of s. 119.12, F.S. *Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000). "[T]he fact that the requested documents were produced in the instant case after the action was commenced, but prior to final adjudication of the issue by the trial court, does not render the case moot or preclude consideration of [the petitioner's] entitlement to fees under the statute." *Mazer v. Orange County,* 811 So. 2d 857, 860 (Fla. 5th DCA 2002). *Accord Barfield v. Town of Eatonville,* 675 So. 2d at 224 (appellant entitled to attorney's fees because "[t]he evidence clearly establishes that it was only after the appellant filed a lawsuit that the documents he had previously sought by written request to the Town were finally turned over to him"). *And see Wisner v. City of Tampa Police Department*, *supra*; *Brunson v. Dade County School Board*, 525 So. 2d 933 (Fla. 3d DCA 1988); and *Office of the State Attorney v. Gonzalez, supra*.

A different rule has been applied when it is unclear whether a private corporation is an "agency" for purposes of the Public Records Act. In such cases, the private entity's "swift" action to seek declaratory relief to obtain judicial clarification of its status under the law, rather than immediately comply with a request for public documents, has not been considered an "unlawful refusal" to release documents for purposes of the assessment of attorney's fees even though the corporation is ultimately determined to be an "agency" for purposes of Ch. 119, F.S., disclosure requirements. *See New York Times Company v. PHH Mental Health Services, Inc.*, 616 So. 2d 27 (Fla. 1993). *Accord Fox v. News-Press Publishing Company, Inc.*, 545 So. 2d 941 (Fla. 2d DCA 1989).

In *Harold v. Orange County,* 668 So. 2d 1010, 1012 (Fla. 5th DCA 1996), the 5th District Court of Appeal expanded the *PHH* holding by determining that attorney's fees would not be assessed against a private company, even though the prevailing party had sued to obtain the records after being refused access:

Although the *P.H.H.* court commented on the fact that in that case the private entity had acted swiftly to clarify its status by filing a declaratory judgment action, we do not find that the failure to independently seek such clarification in this case (considering the swiftness of appellant's action), renders an otherwise good faith--even if incorrect--refusal to disclose records an unlawful act.

However, where the entity did not have a "reasonable" or "good faith" belief in the soundness of its position in refusing production, a trial court abused its discretion in failing to award fees and costs. *Knight Ridder, Inc. v. Dade Aviation Consultants,* 808 So. 2d 1268, 1269 (Fla. 3d DCA 2002). Thus, an opinion of independent counsel upon which an entity relied to support its claim that records should not be released to the requestor did not meet the good faith standard because the entity did not provide "full and complete disclosure" of the operative facts to counsel. *Id*. at 1270.

As to calculation of the "reasonable costs of enforcement including reasonable attorneys' fees" to which the prevailing party is entitled, the trial judge is in a better position than the appellate court to make "a factual determination regarding the objectives sought by the [prevailing party], the extent of statutory enforcement obtained, and the time expended in achieving those results." *Daniels v. Bryson*, 548 So. 2d 679, 682 (Fla. 3d DCA 1989). However, where the contract between the client and attorney provided that the attorney would be compensated on a flat hourly basis regardless of the outcome at trial, the trial court erred in awarding an enhanced fee based upon a contingency risk multiplier. *Id.*

Attorney's fees may also be awarded for a successful appeal of a denial of access, provided that at the time of appeal a motion is filed in accordance with the appellate rules. *Downs v. Austin, supra*. *And see Office of the State Attorney v. Gonzalez, supra* (where motion seeking appellate attorney's fees is granted by appellate court and remanded only for calculation of such fees, lower court required to follow court's mandate without further consideration).

3. Criminal and Noncriminal Infraction Penalties.

Section 119.10(1)(b), F.S., states that a public officer who *knowingly* violates the provisions of s. 119.07(1), F.S., is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or $1,000 fine, or both. *See State v. Webb*, 786 So. 2d 602 (Fla. 1st DCA 2001) (s. 119.10[2] authorizes a conviction for violating s. 119.07 only if a defendant is found to have committed such violation "knowingly"; statute cannot be interpreted as allowing a conviction based on mere negligence).

Section 119.10(1)(a), F.S., provides that a violation of any provision of Ch. 119, F.S., by a public officer is a noncriminal infraction, punishable by fine not exceeding $500. *Cf.* s. 838.022(1)(b), F.S. (unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another, to conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act).

A state attorney may prosecute suits charging public officials with violations of the Public Records Act, including those violations which may result in a finding of guilt for a noncriminal infraction. AGO 91-38.